

No. 49121-4-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

S.W,

Respondent.

Appeal from the Juvenile Division of Superior Court of Washington
for Lewis County
Case No. 15-8-00161-2

Appellant's Reply Brief

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I. ARGUMENT

A. **THE ONLY MECHANISM THE TRIAL COURT HAD TO DISMISS S.W.'S CASE *SUA SPONTE* WAS CrR 8.3(b).**

The State's opening brief was concise and to the point. The State, in its reply brief, is only addressing that the trial Court's dismissal was pursuant to CrR 8.3(b). Otherwise the State rests on its argument set forth in its Opening Brief.

There is no provision in the rules for the trial court to dismiss a criminal case pretrial, *sua sponte*, with the exception of CrR 8.3(b) or potentially CrR 4.7(h)(7)(ii). Since this is not a discovery violation case, CrR 4.7(h)(7)(ii) would not apply, as it is the provision which allows the court to issue sanctions for willful discovery violations.

The State has done a comprehensive search of applicable criminal rules and statutes, including RCW Title 10, and cannot find any other provisions then the two listed above granting the trial court authority to summarily dismiss the State's case pretrial without a motion by a party seeking the trial court to grant such relief. See RCW Title 10; RCW ch. 13.40; CrR; JuCR. Similarly, a case law search of Washington State has yielded nothing. This is simply because absent discovery violations, there is no other pretrial mechanism for a trial court to *sua sponte* dismiss the State's case except CrR 8.3(b).

S.W.'s argument in her response brief is that the trial court did not dismiss her case pursuant to CrR 8.3(b), therefore the State's arguments in regard to CrR 8.3(b) are inapplicable. That the trial court dismissed S.W.'s case when determining if it would grant S.W.'s request for a deferred disposition pursuant to RCW 13.40.127. S.W. argues that because a finding of guilt must be entered, that it is within the trial court's discretion to deny the motion and dismiss the case pursuant to RCW 13.40.127(4). There is nothing in the deferred disposition statute that contemplates or allows for the trial court to summarily dismiss the State's prosecution of a juvenile. RCW 13.40.127. Further, the trial court in this case did not review the police report, but only the probable cause statement, and therefore, did not even follow the statute's provisions before dismissing the case. RCW 13.40.127.

S.W.'s argument fails. The trial court abused its discretion when it did not follow the procedures of CrR 8.3(b). This Court should reverse the trial court's denial of the State's motion for reconsideration, reverse and remand for further proceedings.

II. CONCLUSION

For the reasons argued in the State's Opening Brief and this Reply Brief this court should reverse the trial court's ruling dismissing this case and remand the case back to the trial court for at a minimum consideration of the State's motion of reconsideration of the trial court's *sua sponte* dismissal.

RESPECTFULLY submitted this 19th day of January, 2017.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in black ink, appearing to be 'JLM', written over a horizontal line.

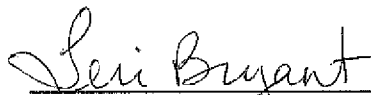
by: _____
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Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON, Appellant, vs. S.W., Respondent.	No. 49121-4-II DECLARATION OF SERVICE
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Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On January 19, 2017, the appellant was served with a copy of the **Appellant's Reply Brief** by email via the COA electronic filing portal to Catherine E. Glinski, attorney for Respondent, at the following email addresses: glinskilaw@wavecable.com.

DATED this 19th day of January, 2017, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

January 19, 2017 - 9:07 AM

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